

The Federal Protective Service and Contract Security Guards: A Statutory History and Current Status

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Summary

The Federal Protective Service (FPS)—within U.S. Immigration Customs Enforcement (ICE) in the Department of Homeland Security (DHS)—is responsible for protecting federal government property, personnel, visitors, and customers, including property leased by the General Services Administration (GSA). FPS currently employs over 15,000 contract security guards to protect federal property. DHS continued the use of contract security guards to focus FPS activities on maintaining security policy and standards, conducting building security assessments, and monitoring federal agency compliance with security standards in FY2009. P.L. 110-329 (the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009) included provisions on FPS maintaining a certain number of police officers. The 110th Congress also enacted P.L. 110-356 (the Federal Protective Service Guard Contracting Reform Act of 2008) which addressed the issue of awarding federal contracts to privately owned contract security guard businesses. The 111th Congress has yet to take any legislative action on FPS, however, the Administration's FY2010 budget request proposes to transfer FPS from ICE to the National Protection and Programs Directorate (NPPD) within DHS, which the Senate-passed version of H.R. 2892 supports. This report will be updated as developments warrant.

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Federal Protective Service Statutory History

The responsibility to protect federal buildings was established in the Federal Works Agency in June 1948.¹ Specifically, Congress authorized the Federal Works Administrator to appoint uniformed guards as special policemen with the responsibility of “the policing of public buildings and other areas under the jurisdiction of the Federal Works Agency.”² The special policemen were given the same responsibility as sheriffs and constables on federal property to enforce the laws enacted for the protection of persons and property, and to prevent “breaches of peace, suppress affrays or unlawful assemblies.”³

On June 30, 1949, the Federal Works Agency was abolished, and all of its functions, including the protection of federal buildings, were transferred to the General Services Administration (GSA).⁴ In September 1961, Congress authorized the GSA Administrator to appoint non-uniformed special policemen to: conduct investigations in order to protect property under the control of GSA; enforce federal law to protect persons and property; and make an arrest without a warrant for any offense committed upon federal property if a policeman had reason to believe the offense was a felony and the person to be arrested was guilty of the felony.⁵

The GSA Administrator formally established the Federal Protective Service (FPS) in January 1971 through GSA Administrative Order 5440.46. FPS, as an official GSA agency, continued to protect federal property and buildings with both uniformed and non-uniformed policemen.

FPS was transferred to the Department of Homeland Security (DHS), and placed within the U.S. Immigration and Customs Enforcement (ICE), with enactment of the Homeland Security Act of 2002 (P.L. 107-296). The act required the DHS Secretary to “protect the buildings, grounds, and property that are owned, occupied, or secured by the Federal Government (including any agency, instrumentality, or wholly owned or mixed ownership corporation thereof) and persons on the property.”⁶

Under current statutory provisions FPS officers are authorized to:

- enforce federal laws and regulations to protect persons and federal property;
- carry firearms;
- make arrests without a warrant for any offense against the United States committed in the presence of an officer or for any federal felony;
- serve warrants and subpoenas issued under the authority of the United States;
- conduct investigations, on and off federal property, of offenses that may have been committed against the federal property or persons on the property; and

¹ 62 Stat. 281.

² Ibid.

³ Ibid.

⁴ 63 Stat. 380.

⁵ P.L. 87-275, Sec. 5, 40 U.S.C. §318.

⁶ 40 U.S.C. §1315(a). The DHS Secretary was authorized to designate DHS employees, including those transferred from FPS, as officers with responsibility for protecting federal property. Some federal buildings, however, are protected by guards who are not part of FPS, such as the buildings of the U.S. State Department, which has its own uniformed law enforcement officers.

- carry out other activities for the promotion of homeland security as the DHS Secretary may prescribe.⁷

Federal Protective Service Contract Security Guards

According to the DHS Inspector General (DHS IG), contract guard services “represent the single largest item in the FPS operating budget, with an estimated FY2006 budget of \$487 million.”⁸ FPS currently uses approximately 15,000 contract security guards who, along with approximately 950 FPS law enforcement officers, provide security and law enforcement coverage to all GSA owned and operated federal property.⁹

FPS contract security guard responsibilities include federal building access control, employee and visitor identification checks, security equipment monitoring, and roving patrols of the interior and exterior of federal property.¹⁰ Within the National Capital Region (NCR), contracts with 54 private security guard companies provide approximately 5,700 guards to protect 125 federal facilities. FPS issues task orders to contract security guard services that detail terms and conditions under which the contract security guard services are to be provided. Some of these task orders include the identification of buildings requiring protection, specific guard post locations, the hours and days of the week each post is to be staffed, whether security guards are to be armed, and the number of guards at each post.

FPS requires that security guard contractors ensure that their guards are qualified by undergoing background checks. They must possess required licenses, certifications, and permits. Additionally, companies that employ contract security guards must comply with performance requirements that include items such as guard appearance, work hours, supervision, equipment, and record keeping.¹¹ Contract security guards are also required to undergo training and pass an FPS administered written examination. The required training, licenses, certification, and permits include but are not limited to the following tasks and skills:

- background investigation;
- contractor provided basic training;
- contractor provided refresher training;
- Cardiopulmonary Resuscitation (CPR) training and certification;
- domestic violence prevention certification;
- FPS provided orientation training;
- contractor provided firearms training;
- firearms qualification;
- annual firearms re-qualification;

⁷ 40 U.S.C. §1315(b)(2).

⁸ U.S. Department of Homeland Security, Office of Inspector General, *Federal Protective Service Needs to Improve its Oversight of the Contract Guard Program*, OIG-07-05, October 2006, p. 2.

⁹ U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Federal Protective Service, “Fiscal Year 2009 Congressional Justification,” February 2008, p. 3.

¹⁰ U.S. Department of Homeland Security, Office of Inspector General, *Federal Protective Service Needs to Improve its Oversight of the Contract Guard Program*, OIG-07-05, October 2006, p. 2.

¹¹ Ibid.

- medical screening;
- first aid certification;
- drug screening;
- written exam;
- state weapons permit;
- expandable baton certification; and
- use of magnetometers and X-ray machine.¹²

Following the 2006 audit of the NCR's FPS security guard contracts, the DHS IG concluded that FPS has become increasingly reliant on its contract guard force, is not adequately monitoring its security guard contracts, and that contract violations in the NCR exist. Some of the contract violations included unarmed guards working at armed posts, a guard with felony convictions being employed by one contractor, and guards without the required security clearances. Additionally, the DHS IG reported that "these lapses in contractor oversight can result in the government paying for services it did not receive, loss of monies resulting from contract deductions due to nonperformance, and placing FPS-protected facilities, employees, and facility visitors at risk."¹³

The ICE Assistant Secretary, Julie L. Myers, received the DHS IG audit prior to its release in October 2006, and formally responded to the audit's findings and recommendations. She asserted, for example, that ICE and FPS will improve their monitoring of the contract security guard program by increasing the number of ICE and FPS employees trained to oversee the program, will provide them with better training, and will use the tracking mechanisms to ensure contract security guard quality assurance.¹⁴

To address issues associated with the management of FPS security guard contracts, Congress enacted P.L. 110-356 (the Federal Protective Service Guard Contracting Reform Act of 2008) which requires the DHS Secretary, acting through the Assistant Secretary of U.S. Immigration and Customs Enforcement, to establish guidelines that prohibit convicted felons—who own contract security guard businesses—from being awarded federal security guard contracts.¹⁵ Additionally, 18 months after the enactment of these guidelines, the Administrator for Federal Procurement Policy is to report to Congress on establishing similar guidelines for all of the federal government.¹⁶

Department of Homeland Security Intended Changes

In FY2009 the physical security of federal property is being maintained solely by contract security guards. DHS intends for FPS to continue maintaining security policy and standards, conducting building security assessments, and monitoring federal agency compliance with

¹² Ibid., p. 33.

¹³ Ibid., p. 14.

¹⁴ Ibid., p. 30.

¹⁵ P.L. 110-356, Sec. 2(a)(1)(A).

¹⁶ P.L. 110-356, Sec. 3.

security standards.¹⁷ Also, in FY2009, the FPS continues to provide law enforcement and security services at National Security Special Events (NSSE)¹⁸ that may increase threats at or in the vicinity of federal facilities. Such events included the 2008 Democratic and Republican National Nominating Conventions, and the inauguration of President Barack Obama.¹⁹ Additionally, the Administration, in the FY2010 budget request, proposes to transfer FPS from ICE to the National Protection and Programs Directorate (NPPD) within DHS.²⁰

In FY2007, the Administration realigned its workforce and reduced the number of FPS law enforcement officers and investigators. A Government Accountability Office (GAO) report, issued in June 2008, stated that FPS's staff decreased by approximately 20%, from about 1,400 employees at the end of FY2004 to approximately 1,100 employees at the end of FY2007.²¹ According to the GAO, this reduction in FPS's staff resulted in the reduction of security at federal facilities and increased the risk of crime or terrorist attacks.²² Finally, GAO stated that the decision by FPS to eliminate proactive security patrols at federal facilities resulted in FPS law enforcement personnel not being able to conduct security operations. Such operations involve inspecting suspicious vehicles, monitoring suspicious individuals, or detecting and deterring criminal activity in and around federal buildings.²³

In July 2009, GAO issued another report that found that FPS does not have a strategic human capital plan to guide its workforce planning efforts. This included processes for training, retention, and staff development. GAO also found that the majority of FPS "customers"²⁴ did not rely on FPS in emergency situations.²⁵

On January 3, 2007, the National Association of Security Companies (NASCO) established and hosted the first meeting of its Federal Protective Service Working Group. NASCO reportedly established this working group in response to the increased use of contract security guards by DHS for the physical security of federal property. This working group is to begin the task-analysis process for security guards and law enforcement officers for federal and commercial markets to provide basic "best practices" guidelines for security. NASCO states that the three primary goals of the working group are to establish the security guard definition, to identify security functions and tasks, and to validate these functions for contract and training requirements.²⁶

¹⁷ U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Federal Protective Service, "Fiscal Year 2009 Congressional Justification," p. 4.

¹⁸ For information on NSSEs, see <http://www.ustras.gov/ussnsse.shtml>. ICE law enforcement officers generally, and FPS officers specifically participated in providing security at the recent inaugural ceremonies in Washington, DC, on January 20, 2009.

¹⁹ U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Federal Protective Service, "Fiscal Year 2009 Congressional Justification," p. 5.

²⁰ U.S. Department of Homeland Security, National Protection and Programs Directorate, *Federal Protective Service: FY2010 Congressional Justification*, Washington, DC, May 2009, pp. FPS-1.

²¹ U.S. Government Accountability Office, *Homeland Security: The Federal Protective Service Faces Several Challenges That Hamper Its Ability to Protect Federal Facilities* (Washington: June 2008), p. 12.

²² Ibid.

²³ Ibid., p. 14.

²⁴ FPS customers is defined as federal departments, agencies, and entities that utilize FPS and FPS contract security companies for security operations.

²⁵ U.S. Government Accountability Office, *Homeland Security: Federal Protective Service Should Improve Human Capital Planning and Better Communicate with Tenants*, GAO-09-749, July 2009, p. 1.

²⁶ National Association of Security Companies, "NASCO Creates Federal Protective Service Working Group," press release, January 3, 2007.

To address the issues identified by the GAO and FPS's reduction in its workforce, the 110th Congress enacted P.L. 110-329 (the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009) which requires the Office of Management and Budget and DHS to fully fund FPS operations through the collection of security fees paid by federal departments and agencies.²⁷ The security fee is intended to ensure that FPS maintains not fewer than 1,200 full-time equivalent staff and 900 full-time equivalent police officers, inspectors, area commanders, and special agents.

The Administration states that the transfer of FPS to NPPD will allow ICE to focus its law enforcement operations on protecting the nation by targeting the people, money, and materials that support terrorists and criminals relating to the nation's borders. Also, the Administration states that FPS should be transferred to NPPD given the directorate's responsibility of implementing the National Infrastructure Protection Plan (NIPP). This proposal is based primarily on: 1) to allow ICE to focus its operations on border security; and 2) to reinforce, or "solidify" NPPD's role in infrastructure protection. Both of these reasons may be considered valid considering the increased congressional and national interest in ICE and border security, and, to what appears to be, a logical location for DHS's infrastructure protection law enforcement agency. Conversely, one could argue that NPPD does not include any other law enforcement operational entity that has a similar infrastructure protection responsibility. Only the Senate-passed version of H.R. 2892 propose to transfer FPS to NPPD.

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²⁷ P.L. 110-329, Title II, mandates that OMB "certify in writing" to the Committees of Appropriations of the Senate and the House of Representatives that FPS will be fully funded in FY2009.